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EXAMINER

CHEN, QING

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/786,823	Applicant(s) BOCKING ET AL.	
	Examiner Qing Chen	Art Unit 2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,8-12,14-19 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,8-12,14-19 and 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20040225</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office action is in response to the amendment filed on February 25, 2008.
2. **Claims 1, 2, 4-6, 8-12, 14-19, and 21-23** are pending.
3. **Claims 1, 2, 4-6, 8-12, 14, 19, 22, and 23** have been amended.
4. **Claims 3, 7, 13, and 20** have been cancelled.
5. The objections to Claims 2, 4-11, and 23 are withdrawn in view of Applicant's amendments to the claims or cancellation of the claims. However, the objections to Claims 1, 2, 4-6, 8-12, 14-19, and 21-23 due to improper antecedent bases are maintained in view of Applicant's arguments and amendments to the claims. Accordingly, these objections are maintained and further explained below.
6. The provisional obviousness-type double patenting rejections of Claims 1, 2, 4-6, 8-12, 14-19, and 21 are maintained in view of Applicant's arguments and further explained below. The provisional obviousness-type double patenting rejection of Claim 7 is withdrawn in view of Applicant's cancellation of the claim.
7. The 35 U.S.C. § 112, second paragraph, rejections of Claims 1, 2, 4-12, 14-19, and 21-23 are withdrawn in view of Applicant's amendments to the claims or cancellation of the claims.

Response to Amendment

Claim Objections

8. **Claims 1, 2, 4-6, 8-12, 14-19, and 21-23** are objected to because of the following informalities:

- **Claims 1, 4, 6, 8, 11, 14, 22, and 23** recite the limitation “said programs.” Applicant is advised to change this limitation to read “said plurality of programs” for the purpose of providing it with proper explicit antecedent basis and/or keeping the claim language consistent throughout the claims.
- **Claims 2, 5, 9, and 10** depend on Claim 1 and, therefore, suffer the same deficiency as Claim 1.
- **Claims 12, 15-19, and 21** depend on Claim 11 and, therefore, suffer the same deficiency as Claim 11.
- **Claims 1, 6, and 11** recite the limitation “said identifiers.” Applicant is advised to change this limitation to read “said plurality of identifiers” for the purpose of providing it with proper explicit antecedent basis and/or keeping the claim language consistent throughout the claims.
- **Claims 2, 4, 5, 8-10, and 23** depend on Claim 1 and, therefore, suffer the same deficiency as Claim 1.
- **Claims 12, 14-19, 21, and 22** depend on Claim 11 and, therefore, suffer the same deficiency as Claim 11.
- **Claims 2 and 12** recite the limitation “said application programs.” Applicant is advised to change this limitation to read “said plurality of application programs” for the purpose of providing it with proper explicit antecedent basis and/or keeping the claim language consistent throughout the claims.
- **Claim 4** recites the limitation “said vendor identifiers.” Applicant is advised to change this limitation to read “said plurality of vendor identifiers” for the purpose of

providing it with proper explicit antecedent basis and/or keeping the claim language consistent throughout the claims.

- **Claims 4 and 14** recite the limitation “the vendor identifiers.” Applicant is advised to change this limitation to read “said plurality of vendor identifiers” for the purpose of providing it with proper explicit antecedent basis and/or keeping the claim language consistent throughout the claims.
- **Claim 6** contains a typographical error: “The method of Claim 1 further comprising” should be deleted.
- **Claim 11** contains a typographical error: “[C]ommunication communications channel” should read -- communication channel --.
- **Claim 19** contains a typographical error: “[T]he group consisting of comprising” should read -- the group consisting of --.

Appropriate correction is required.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. **Claims 1, 2, 4-6, 8-12, 14-19, and 21** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1, 2, 4-12, 14, 15, 17-20, and 26 of copending Application No. 10/988,304 (hereinafter Application ‘304) in view of **US 6,701,521 (hereinafter “McLlroy”)**.

Claim 1 of Application ‘304 is compared to Claim 1 of the instant application in the table below. The only additions to the claim in Application ‘304 are the limitations:

- connecting the program store location and the host system by a communication network; and
- downloading said selected program from the host system to the target system.

McLlroy discloses:

- connecting the program store location and the host system by a communication network (*see Figure 9A*); and
- downloading said selected program from the host system to the target system (*see Column 18: 10-13, “... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system.”*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate connecting the program store location and the host system by a communication network; and downloading said selected program from the host system to the target system into the instant application. The modification would be obvious because one of ordinary skill in the art would be motivated to conveniently exchange data and information between a host computer and a target computer using a communication interface (*see McLlroy – Column 1: 40-43*).

Copending Application 10/988,304	Instant Application 10/786,823
1. A method of <i>downloading a program from a program store location to a host system and to a target system</i> , said method comprising:	1. A method of <i>selecting a program for download from a host system to a target system</i> , said method comprising:
storing a plurality of programs at the <i>program store location</i> ;	storing a plurality of programs at the <i>host system</i> ;
storing a plurality of identifiers at the <i>program store location</i> , with each of at least some of said identifiers being associated with at least one of said programs;	storing a plurality of identifiers at the <i>host system</i> , with each of at least one of said identifiers being associated with at least one of said programs;
<u>connecting the program store location and the host system by a communication network;</u>	
connecting the host system and the target system by a communication channel;	connecting the host system and the target system by a communication channel;
sending <i>an identifier</i> from the target system to the host system over the communication channel;	sending <i>a hardware identifier and a vendor identifier</i> from the target system to the host system over the communication channel;
receiving <i>said identifier as a received identifier</i> at the host system;	receiving <i>said hardware identifier and said vendor identifier</i> at the host system; and
employing said identifiers and <i>said received identifier</i> to select one of said at least one of said programs for download <u>as a selected program from the program store location to the host system; and</u>	employing said plurality of identifiers and <i>said received hardware identifier and said received vendor identifier</i> to select one of said at least one of said programs for download <i>from the host system to the target system</i> ;
<u>downloading said selected program from the host system to the target system.</u>	
	<u>associating a vendor with the target system;</u>

	<u>employing said vendor identifier, which identifies said vendor;</u>
	<u>storing a program associated with said hardware identifier at the host system; and</u>
	<u>failing to find said received identifier at the host system and responsively downloading said program associated with said received hardware identifier over the communication channel from the host system to the target system.</u>

Claim 11 is a system claim corresponding to the method claim above (Claim 1) and, therefore, is provisionally rejected for the same reason set forth in the rejection of Claim 1.

Copending Application 10/988,304	Instant Application 10/786,823
11. A system for <i>downloading a program</i> , said system comprising:	11. A system for <i>selecting a program for download</i> , said system comprising:
a <i>program store location</i> including a memory storing a plurality of programs, said memory also storing a plurality of identifiers, with each of at least some of said identifiers being associated with at least one of said programs;	a <i>host system</i> including a memory storing a plurality of programs, said memory also storing a plurality of identifiers, with each of at least one of said identifiers being associated with at least one of said programs;
<u>a host system;</u>	
a target system including <i>an identifier</i> ;	a target system including <i>a hardware identifier representing said target system and a vendor identifier representing a vendor associated with said target system</i> ;
<u>a communication network connecting said program store location and said host system;</u>	
a communication channel connecting said host system and said target system; and	a communication channel connecting said host system and said target system; and
a loader routine adapted to execute at said host system, <u>communicate with said program store location through the communication network</u> , communicate with said target system through the communication channel, receive <i>said identifier as a received identifier</i> from said target system over the communication channel, employ said identifiers from <u>said</u>	a loader routine adapted to execute at said host system, communicate with said target system through the communication channel, <u>request and</u> receive <i>said hardware identifier and said vendor identifier</i> from said target system over the communication channel, <u>and</u> employ said plurality of identifiers and <i>said received hardware identifier and said received vendor</i>

<u>program store location</u> and <i>said received identifier</i> to select one of said at least one of said programs for download <u>as a selected program</u> from <i>said program store location to said host system</i> , <u>and download said selected program from said host system to said target system.</u>	<i>identifier</i> to select one of said at least one of said programs for download from <i>said host system to said target system</i> ,
	<u>wherein said vendor identifier identifies said vendor,</u>
	<u>wherein a program associated with said hardware identifier is stored at the host system, and</u>
	<u>wherein said loader routine is further adapted, after failing to find said received vendor identifier at the host system, to responsively download said program associated with said received hardware identifier over the communication channel from the host system to the target system.</u>

Claim 26 of Application '304 is compared to Claim 1 of the instant application in the table below. The only additions to the claim in Application '304 are the limitations:

- storing a program loader at the program store location;
 - download said selected program from said destination system to said target system;
- and
- enabling communication of the program loader from the program store location to said destination system over said communication network.

McLlroy discloses:

- storing a program loader at the program store location (*see Figure 9A: 950*);
- download said selected program from said destination system to said target system (*see Column 18: 10-13, "... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system."*); and

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- enabling communication of the program loader from the program store location to said destination system over said communication network (*see Column 17: 52-58, "... application description 1030 can be communicated by portable computer system 1020 directly to WWW server 910 via a wireless connection 930 or a wired connection 940 ..."*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate storing a program loader at the program store location; download said selected program from said destination system to said target system; and enabling communication of the program loader from the program store location to said destination system over said communication network the instant application. The modification would be obvious because one of ordinary skill in the art would be motivated to conveniently exchange data and information between a host computer and a target computer using a communication interface (*see McIlroy – Column 1: 40-43*).

Copending Application 10/988,304	Instant Application 10/786,823
26. A method of <i>enabling download of a program from a program store location for a destination system</i> , said method comprising:	1. A method of <i>selecting a program for download from a host system to a target system</i> , said method comprising:
storing a plurality of programs at the <i>program store location</i> ;	storing a plurality of programs at the <i>host system</i> ;
storing a plurality of identifiers at the <i>program store location</i> , with each of at least some of said identifiers being associated with at least one of said programs;	storing a plurality of identifiers at the <i>host system</i> , with each of at least one of said identifiers being associated with at least one of said programs;
<u>storing a program loader at the program store location</u> ;	
<i>adapting said program loader to execute at said destination system, communicate with said program store location through a communication network,</i>	<i>connecting the host system and the target system by a communication channel</i> ;
	sending <i>a hardware identifier and a vendor</i>

	<i>identifier</i> from the target system to the host system over the communication channel;
receive <i>an identifier as a received identifier</i> from a target system,	receiving <i>said hardware identifier and said vendor identifier</i> at the host system; and
employ said identifiers <u>from said program store location</u> and <i>said received identifier</i> to select one of said at least one of said programs for download <u>as a selected program from said program store location to said destination system, and</u>	employing said plurality of identifiers and <i>said received hardware identifier and said received vendor identifier</i> to select one of said at least one of said programs for download <i>from the host system to the target system;</i>
<u>download said selected program from said destination system to said target system; and</u>	
<u>enabling communication of the program loader from the program store location to said destination system over said communication network.</u>	
	<u>associating a vendor with the target system;</u>
	<u>employing said vendor identifier, which identifies said vendor;</u>
	<u>storing a program associated with said hardware identifier at the host system; and</u>
	<u>failing to find said received identifier at the host system and responsively downloading said program associated with said received hardware identifier over the communication channel from the host system to the target system.</u>

As per **Claims 2, 4-6, 8-10, 12, 14-19, and 21** of the instant application, the limitations in each of these dependent claims are also recited in Claims 2, 4-10, 12, 14, 15, and 17-20, respectively, of Application ‘304.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. **Claims 1, 2, 4, 5, 8, 11, 12, 14-19, and 21-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over **US 6,701,521 (hereinafter “McLlroy”)** in view of **US 2002/0010652 (hereinafter “Deguchi”)**.

As per **Claim 1**, McLlroy discloses:

- storing a plurality of programs at the host system (*see Column 19: 21-23, “... applications are located at application source 915 (e.g., a site on the WWW) ...”*);
- storing a plurality of identifiers at the host system, with each of at least one of said plurality of identifiers being associated with at least one of said plurality of programs (*see Column 10: 44-57, “The file link configuration database 324 is linked to the file sharing manager 322 and specifies, for a particular database, its source file, category information, and the frequency of update for the database.”*);
- connecting the host system and the target system by a communication channel (*see Column 10: 64-66, “... portable computer system 100 can be interfaced with computer system 342 using a wireless (e.g., radio) connection.”*);

- sending a hardware identifier and a vendor identifier from the target system to the host system over the communication channel (*see Column 12: 30-37, "The application description can also contain information identifying the version of the application of interest, the name of the application, the vendor's name, or other such identifying information."; Column 12: 45-47, "... portable computer systems 920, 922, 924 and 926 can also communicate their hardware and software attributes to software manager 950."*);
- receiving said hardware identifier and said vendor identifier at the host system (*see Column 13: 4-6, "... portable computer systems 924 and 926 can also communicate information identifying their hardware and software attributes to software manager 950."*);
- employing said plurality of identifiers and said received hardware identifier and said received vendor identifier to select one of said at least one of said plurality of programs for download from the host system to the target system (*see Column 18: 1-5, "... a specification 1040 comprising application description 1030 and the hardware and software information is used by software manager 950 to locate application source 915, or to locate application 1050 within application source 915."* and 10-13, "... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system.");
- associating a vendor with the target system (*see Column 12: 30-37, "The application description can also contain information identifying the version of the application of interest, the name of the application, the vendor's name, or other such identifying information."*);
- employing said vendor identifier, which identifies said vendor (*see Column 12: 30-37, "The application description can also contain information identifying the version of the*

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application of interest, the name of the application, the vendor's name, or other such identifying information.”);

- storing a program associated with said hardware identifier at the host system (*see Column 19: 21-23, “... applications are located at application source 915 (e.g., a site on the WWW) ... ”); and*

- responsively downloading said program associated with said received hardware identifier over the communication channel from the host system to the target system (*see Column 18: 1-5, “... a specification 1040 comprising application description 1030 and the hardware and software information is used by software manager 950 to locate application source 915, or to locate application 1050 within application source 915.” and 10-13, “... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system.”).*

However, McLlroy does not disclose:

- failing to find said received vendor identifier at the host system.

Deguchi discloses:

- failing to find said received vendor identifier at the host system (*see Paragraph [0070], “Referring back to FIG. 15, if at step 1540 server terminal 105 does not find a matching vendor ID in vendor ID database 864 corresponding to the device ID ... ”).*

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Deguchi into the teaching of McLlroy to include failing to find said received vendor identifier at the host system. The modification would

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be obvious because one of ordinary skill in the art would be motivated to determine the availability of the application using vendor information.

As per **Claim 2**, the rejection of **Claim 1** is incorporated; and McLlroy further discloses:

- employing as said plurality of programs a plurality of application programs (*see Column 19: 21-23, "... applications are located at application source 915 (e.g., a site on the WWW) ..."*);
 - including an application loader at the host system (*see Figure 9A: 950*);
 - requesting said hardware identifier and said vendor identifier from the target system by said application loader over the communication channel (*see Column 13: 4-6, "... portable computer systems 924 and 926 can also communicate information identifying their hardware and software attributes to software manager 950."*);
 - receiving said hardware identifier and said vendor identifier at said application loader (*see Column 13: 4-6, "... portable computer systems 924 and 926 can also communicate information identifying their hardware and software attributes to software manager 950."*);
 - determining that said received hardware identifier and said received vendor identifier match one of said plurality of identifiers and responsively selecting one of said plurality of application programs (*see Column 18: 1-5, "... a specification 1040 comprising application description 1030 and the hardware and software information is used by software manager 950 to locate application source 915, or to locate application 1050 within application source 915."*);
- and

- downloading said selected one of said plurality of application programs over the communication channel from said application loader to the target system (*see Column 18: 10-13, "... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system."*).

As per **Claim 4**, the rejection of **Claim 1** is incorporated; and McLlroy further discloses:

- storing said hardware identifier for the target system with said vendor identifier at the target system (*see Column 12: 25-28, "The application description beamed from portable computer system 990 contains information sufficient for identifying and locating the application of interest, either locally or on the WWW."*);

- requesting said hardware identifier and said vendor identifier from the target system by the host system over the communication channel (*see Column 13: 4-6, "... portable computer systems 924 and 926 can also communicate information identifying their hardware and software attributes to software manager 950."*);

- employing a plurality of vendor identifiers and associating one of said plurality of vendor identifiers and at least one hardware identifier with each of said plurality of programs at the host system (*see Column 18: 1-5, "... a specification 1040 comprising application description 1030 and the hardware and software information is used by software manager 950 to locate application source 915, or to locate application 1050 within application source 915."*);

- determining that said received vendor identifier matches one of said plurality of vendor identifiers (*see Column 21: 64-67 to Column 22: 1-3, "... using the applications and attributes information 1230, software manager 955 can automatically search application source*

915 to identify updated versions of the applications, components, objects or files currently installed on portable computer system 1220 and compatible with the hardware and software attributes of portable computer system 1220.”); and

- determining that said received hardware identifier matches said at least one hardware identifier associated with said one of said plurality of vendor identifiers and responsively downloading said selected one of said at least one of said plurality of programs over the communication channel from the host system to the target system (*see Column 18: 10-13, “... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system.”; Column 21: 64-67 to Column 22: 1-3, “... using the applications and attributes information 1230, software manager 955 can automatically search application source 915 to identify updated versions of the applications, components, objects or files currently installed on portable computer system 1220 and compatible with the hardware and software attributes of portable computer system 1220.”).*

As per **Claim 5**, the rejection of **Claim 1** is incorporated; and McLlroy further discloses:

- storing said hardware identifier for the target system with said vendor identifier at the target system (*see Column 12: 25-28, “The application description beamed from portable computer system 990 contains information sufficient for identifying and locating the application of interest, either locally or on the WWW.”);*

- storing a program associated with said hardware identifier at the host system (*see Column 19: 21-23, “... applications are located at application source 915 (e.g., a site on the WWW) ... ”);*

- requesting said hardware identifier and said vendor identifier from the target system by the host system over the communication channel (*see Column 13: 4-6, "... portable computer systems 924 and 926 can also communicate information identifying their hardware and software attributes to software manager 950."*);
- associating a vendor identifier and at least one hardware identifier with each of said plurality of programs at the host system (*see Column 12: 30-37, "The application description can also contain information identifying the version of the application of interest, the name of the application, the vendor's name, or other such identifying information."; Column 12: 45-47, "... portable computer systems 920, 922, 924 and 926 can also communicate their hardware and software attributes to software manager 950."*);
- determining that said received vendor identifier has a predetermined value (*see Column 12: 30-37, "The application description can also contain information identifying the version of the application of interest, the name of the application, the vendor's name, or other such identifying information."*); and
- downloading said program associated with said received hardware identifier over the communication channel from the host system to the target system (*see Column 18: 10-13, "... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system."*).

As per **Claim 8**, the rejection of **Claim 1** is incorporated; and McLlroy further discloses:

- downloading said selected one of said at least one of said plurality of programs over the communication channel from the host system to the target system (*see Column 18: 10-13,*

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“... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system.”); and

- loading and executing said downloaded and selected one of said at least one of said plurality of programs at the target system (*see Column 18: 10-13, “... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system.”).*

As per **Claim 11**, McLlroy discloses:

- a host system including a memory storing a plurality of programs, said memory also storing a plurality of identifiers, with each of at least one of said plurality of identifiers being associated with at least one of said plurality of programs (*see Figure 8: 342; Column 10: 44-57, “The file link configuration database 324 is linked to the file sharing manager 322 and specifies, for a particular database, its source file, category information, and the frequency of update for the database.”);*

- a target system including a hardware identifier representing said target system and a vendor identifier representing a vendor associated with said target system (*see Figure 8: 100; Column 12: 30-37, “The application description can also contain information identifying the version of the application of interest, the name of the application, the vendor's name, or other such identifying information.”; Column 12: 45-47, “... portable computer systems 920, 922, 924 and 926 can also communicate their hardware and software attributes to software manager 950.”);*

- a communication channel connecting said host system and said target system (*see Column 10: 64-66, "... portable computer system 100 can be interfaced with computer system 342 using a wireless (e.g., radio) connection."*); and
- a loader routine adapted to execute at said host system, communicate with said target system through the communication channel, request and receive said hardware identifier and said vendor identifier from said target system over the communication channel, and employ said plurality of identifiers and said received hardware identifier and said received vendor identifier to select one of said at least one of said plurality of programs for download from said host system to said target system (*see Figure 8: 322; Column 18: 1-5, "... a specification 1040 comprising application description 1030 and the hardware and software information is used by software manager 950 to locate application source 915, or to locate application 1050 within application source 915."* and 10-13, "... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system."),
- wherein said vendor identifier identifies said vendor (*see Column 12: 30-37, "The application description can also contain information identifying the version of the application of interest, the name of the application, the vendor's name, or other such identifying information."*),
- wherein a program associated with said hardware identifier is stored at the host system (*see Column 19: 21-23, "... applications are located at application source 915 (e.g., a site on the WWW) ..."*), and
- wherein said loader routine is further adapted to responsively download said program associated with said received hardware identifier over the communication channel from the host system to the target system (*see Column 18: 1-5, "... a specification 1040 comprising*

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application description 1030 and the hardware and software information is used by software manager 950 to locate application source 915, or to locate application 1050 within application source 915.” and 10-13, “... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system.”).

However, McLlroy does not disclose:

- failing to find said received vendor identifier at the host system.

Deguchi discloses:

- failing to find said received vendor identifier at the host system (*see Paragraph [0070], “Referring back to FIG. 15, if at step 1540 server terminal 105 does not find a matching vendor ID in vendor ID database 864 corresponding to the device ID ...”*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Deguchi into the teaching of McLlroy to include failing to find said received vendor identifier at the host system. The modification would be obvious because one of ordinary skill in the art would be motivated to determine the availability of the application using vendor information.

As per **Claim 12**, the rejection of **Claim 11** is incorporated; and McLlroy further discloses:

- wherein said plurality of programs are a plurality of application programs; and wherein said loader routine is an application loader routine adapted to request said hardware identifier and said vendor identifier from said target system over the communication channel, receive said hardware identifier and said vendor identifier, determine that said received hardware

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identifier and said received vendor identifier match one of said plurality of identifiers and responsively select one of said plurality of application programs, and download said selected one of said plurality of application programs over the communication channel to said target system (see Column 13: 4-6, "... portable computer systems 924 and 926 can also communicate information identifying their hardware and software attributes to software manager 950."; Column 18: 1-5, "... a specification 1040 comprising application description 1030 and the hardware and software information is used by software manager 950 to locate application source 915, or to locate application 1050 within application source 915." and 10-13, "... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system."; Column 19: 21-23, "... applications are located at application source 915 (e.g., a site on the WWW) ...").

As per **Claim 14**, the rejection of **Claim 11** is incorporated; and McLlroy further discloses:

- wherein said loader routine is further adapted to employ a plurality of vendor identifiers, request said hardware identifier and said vendor identifier from said target system over the communication channel, receive said hardware identifier and said vendor identifier, associate a vendor identifier and at least one hardware identifier with each of said plurality of programs, determine that said received vendor identifier matches one of said plurality of vendor identifiers, and determine that said received hardware identifier matches said at least one hardware identifier associated with said one of said plurality of vendor identifiers and responsively download said selected one of said at least one of said plurality of programs over

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the communication channel to said target system (*see Column 12: 30-37, "The application description can also contain information identifying the version of the application of interest, the name of the application, the vendor's name, or other such identifying information."*; Column 13: 4-6, "... portable computer systems 924 and 926 can also communicate information identifying their hardware and software attributes to software manager 950."; Column 18: 10-13, "... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system."; Column 21: 64-67 to Column 22: 1-3, "... using the applications and attributes information 1230, software manager 955 can automatically search application source 915 to identify updated versions of the applications, components, objects or files currently installed on portable computer system 1220 and compatible with the hardware and software attributes of portable computer system 1220.").

As per **Claim 15**, the rejection of **Claim 11** is incorporated; and McLlroy further discloses:

- wherein said vendor identifier is associated with a wireless communication vendor; and wherein said target system includes a first wired communication port adapted to communicate with said communication channel, and a second wireless communication port adapted to communicate with said wireless communication vendor (*see Column 12: 30-37, "The application description can also contain information identifying the version of the application of interest, the name of the application, the vendor's name, or other such identifying information."*; Column 8: 18-23, "... the communication interface 180 is a serial communication port, but could also alternatively be of any of a number of well-known communication standards and protocols,

e.g., parallel, SCSI (small computer system interface), Firewire (IEEE1394), Ethernet, etc.” and 48-52, “In one implementation the Mobitex wireless communication system is used to provide two-way communication between computer system 100 and other networked computers and/or the Internet via a proxy server (see FIG. 1A).”).

As per **Claim 16**, the rejection of **Claim 11** is incorporated; and McLlroy further discloses:

- wherein said target system is a mobile electronic device (*see Column 6: 53-54, “Portable computer system 100 is also known as a palmtop or palm-sized computer system.”*).

As per **Claim 17**, the rejection of **Claim 16** is incorporated; and McLlroy further discloses:

- wherein said mobile electronic device is a handheld electronic device (*see Column 6: 53-54, “Portable computer system 100 is also known as a palmtop or palm-sized computer system.”*).

As per **Claim 18**, the rejection of **Claim 17** is incorporated; and McLlroy further discloses:

- wherein said handheld electronic device is a wireless handheld electronic device (*see Column 6: 53-57, “Portable computer system 100 is also known as a palmtop or palm-sized computer system.” and “... portable computer system 100 has the ability to transmit and receive data and information over a wireless communication interface (e.g., a radio interface).”).*

As per **Claim 19**, the rejection of **Claim 11** is incorporated; and McLlroy further discloses:

- wherein said host system is selected from the group consisting of a workstation, and a personal computer (*see Column 9: 63-66, "... an exemplary host computer system 342 (e.g., desktop computer system 56 or laptop computer system 58 of FIG. 1B) ..."*).

As per **Claim 21**, the rejection of **Claim 18** is incorporated; and McLlroy further discloses:

- wherein said vendor identifier is associated with a wireless communication vendor; and wherein said wireless handheld electronic device includes a first wired communication port adapted to communicate with said communication channel, and a second wireless communication port adapted to communicate with said wireless communication vendor (*see Column 12: 30-37, "The application description can also contain information identifying the version of the application of interest, the name of the application, the vendor's name, or other such identifying information."; Column 8: 18-23, "... the communication interface 180 is a serial communication port, but could also alternatively be of any of a number of well-known communication standards and protocols, e.g., parallel, SCSI (small computer system interface), Firewire (IEEE1394), Ethernet, etc." and 48-52, "In one implementation the Mobitex wireless communication system is used to provide two-way communication between computer system 100 and other networked computers and/or the Internet via a proxy server (see FIG. 1A)."*).

As per **Claim 22**, the rejection of **Claim 21** is incorporated; and McLlroy further discloses:

- wherein said selected one of said at least one of said plurality of programs is adapted to enable wireless communication between said second wireless communication port of said wireless handheld electronic device and said wireless communication vendor (*see Column 8: 48-52, "In one implementation the Mobitex wireless communication system is used to provide two-way communication between computer system 100 and other networked computers and/or the Internet via a proxy server (see FIG. 1A)."*).

As per **Claim 23**, the rejection of **Claim 1** is incorporated; and McLlroy further discloses:

- employing a wireless handheld electronic device as said target system (*see Column 6: 53-57, "Portable computer system 100 is also known as a palmtop or palm-sized computer system." and "... portable computer system 100 has the ability to transmit and receive data and information over a wireless communication interface (e.g., a radio interface)."*);
- associating said vendor identifier with a wireless communication vendor (*see Column 12: 30-37, "The application description can also contain information identifying the version of the application of interest, the name of the application, the vendor's name, or other such identifying information."*);
- downloading said selected one of said at least one of said plurality of programs over the communication channel from the host system to the wireless handheld electronic device (*see*

Column 18: 10-13, "... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system.""); and

- loading and executing said downloaded and selected one of said at least one of said plurality of programs at the wireless handheld electronic device to communicate with said wireless communication vendor (*see Column 18: 10-13, "... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system."*).

13. **Claim 6** is rejected under 35 U.S.C. 103(a) as being unpatentable over **McLlroy** in view of **US 6,496,979 (hereinafter "Chen")** and **US 5,860,012 (hereinafter "Luu")**.

As per **Claim 6**, McLlroy discloses:

- storing a plurality of programs at the host system (*see Column 19: 21-23, "... applications are located at application source 915 (e.g., a site on the WWW) ..."*);
- storing a plurality of identifiers at the host system, with each of at least one of said plurality of identifiers being associated with at least one of said plurality of programs (*see Column 10: 44-57, "The file link configuration database 324 is linked to the file sharing manager 322 and specifies, for a particular database, its source file, category information, and the frequency of update for the database."*);
- connecting the host system and the target system by a communication channel (*see Column 10: 64-66, "... portable computer system 100 can be interfaced with computer system 342 using a wireless (e.g., radio) connection."*);

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- sending a hardware identifier and a vendor identifier from the target system to the host system over the communication channel (*see Column 12: 30-37, "The application description can also contain information identifying the version of the application of interest, the name of the application, the vendor's name, or other such identifying information."; Column 12: 45-47, "... portable computer systems 920, 922, 924 and 926 can also communicate their hardware and software attributes to software manager 950."*);
- receiving said hardware identifier and said vendor identifier at the host system (*see Column 13: 4-6, "... portable computer systems 924 and 926 can also communicate information identifying their hardware and software attributes to software manager 950."*);
- employing said plurality of identifiers and said received hardware identifier and said received vendor identifier to select one of said at least one of said plurality of programs for download from the host system to the target system (*see Column 18: 1-5, "... a specification 1040 comprising application description 1030 and the hardware and software information is used by software manager 950 to locate application source 915, or to locate application 1050 within application source 915."* and 10-13, "... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system.");
- associating a vendor with the target system (*see Column 12: 30-37, "The application description can also contain information identifying the version of the application of interest, the name of the application, the vendor's name, or other such identifying information."*);
- employing said vendor identifier, which identifies said vendor (*see Column 12: 30-37, "The application description can also contain information identifying the version of the*

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application of interest, the name of the application, the vendor's name, or other such identifying information.”);

- storing a program associated with said hardware identifier at the host system (*see Column 19: 21-23, “... applications are located at application source 915 (e.g., a site on the WWW) ... ”); and*

- responsively downloading said program associated with said received hardware identifier over the communication channel from the host system to the target system (*see Column 18: 1-5, “... a specification 1040 comprising application description 1030 and the hardware and software information is used by software manager 950 to locate application source 915, or to locate application 1050 within application source 915.” and 10-13, “... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system.”).*

However, McLlroy does not disclose:

- storing said plurality of identifiers in a file at the host system; and
- failing to find said file at the host system.

Chen discloses:

- storing said plurality of identifiers in a file at the host system (*see Column 14: 39-45, “The user interface 163 includes a list 165 of available application programs stored as application setup package files in the store 8 with suitable identifiers 167 ... ”).*

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Chen into the teaching of McLlroy to include storing said plurality of identifiers in a file at the host system. The modification would be

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obvious because one of ordinary skill in the art would be motivated to provide persistent storage of information.

Luu discloses:

- failing to find said file at the host system (*see Column 5: 31-35, "A custom personality file resides on the user workstation. In operation, the installation program on the user workstation will search for a custom personality file. If no custom personality file is found, a default personality file will be utilized to perform the installation."*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Luu into the teaching of McLlroy to include failing to find said file at the host system. The modification would be obvious because one of ordinary skill in the art would be motivated to determine the availability of the application using information stored in a file.

14. **Claim 9** is rejected under 35 U.S.C. 103(a) as being unpatentable over **McLlroy** in view of **Deguchi** as applied to Claim 1 above, and further in view of **Chen** and **US 6,151,643 (hereinafter "Cheng")**.

As per **Claim 9**, the rejection of **Claim 1** is incorporated; and McLlroy further discloses:

- associating a version number with each of said plurality of programs (*see Column 12: 30-37, "The application description can also contain information identifying the version of the application of interest, the name of the application, the vendor's name, or other such identifying information."*);

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- associating one of said plurality of identifiers in said file at the host system with one of said plurality of programs having said version number for said one of said plurality of programs (*see Column 13: 22-29, "... the version of the software elements (e.g., the application itself or files, components or objects for the application) that is compatible with the hardware and software attributes of portable computer systems 920, 922, 924 or 926 is retrieved from application source 915 based on the application description received from portable computer system 990."*); and

- storing said new program at the host system (*see Column 18: 10-13, "... applications may be downloaded and stored in memory of computer system 342, and then subsequently accessed by a portable computer system."*).

However, McLlroy and Deguchi do not disclose:

- storing said plurality of identifiers in a file at the host system; and

- updating said file to associate said one of said plurality of identifiers with a new program, which is different than said plurality of programs, and which has a new version number, which is different than said version number.

Chen discloses:

- storing said plurality of identifiers in a file at the host system (*see Column 14: 39-45, "The user interface 163 includes a list 165 of available application programs stored as application setup package files in the store 8 with suitable identifiers 167 ..."*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Chen into the teaching of McLlroy to include storing said plurality of identifiers in a file at the host system. The modification would be

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obvious because one of ordinary skill in the art would be motivated to provide persistent storage of information.

Cheng discloses:

- updating said file to associate said one of said plurality of identifiers with a new program, which is different than said plurality of programs, and which has a new version number, which is different than said version number (*see Column 10: 26-32, "The update database 709 maintains information identifying a large number of software products, information about the software updates that are available from the diverse software product vendors for these software products, information for identifying software products installed on a client computer 101, and for uniquely distinguishing the versions and names of installed software products."*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Cheng into the teaching of McLlroy to include updating said file to associate said one of said plurality of identifiers with a new program, which is different than said plurality of programs, and which has a new version number, which is different than said version number. The modification would be obvious because one of ordinary skill in the art would be motivated to maintain update information about the application.

15. **Claim 10** is rejected under 35 U.S.C. 103(a) as being unpatentable over **McLlroy** in view of **Deguchi** as applied to Claim 1 above, and further in view of **Chen**.

As per **Claim 10**, the rejection of **Claim 1** is incorporated; and McLlroy further discloses:

- determining that one of said plurality of identifiers matches said received hardware identifier and said received vendor identifier (*see Column 18: 1-5, "... a specification 1040 comprising application description 1030 and the hardware and software information is used by software manager 950 to locate application source 915, or to locate application 1050 within application source 915."*).

However, McLlroy and Deguchi do not disclose:

- determining that none of said plurality of programs corresponds to said one of said plurality of identifiers and responsively displaying an error message at the host system.

Chen discloses:

- determining that none of said plurality of programs corresponds to said one of said plurality of identifiers and responsively displaying an error message at the host system (*see Column 10: 53-60, "... if the user first attempts to install the setup package file for the city, Seattle, without first installing the map viewer, the "init" function determines that the map viewer is not installed and displays an error message, possibly providing information on where the user can obtain the map viewer."*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Chen into the teaching of McLlroy to include determining that none of said plurality of programs corresponds to said one of said plurality of identifiers and responsively displaying an error message at the host system. The modification

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would be obvious because one of ordinary skill in the art would be motivated to provide the user with useful information regarding the error (*see Chen – Column 10: 53-60*).

Response to Arguments

16. Applicant's arguments with respect to Claims 1, 6, 9, and 11 have been considered, but are moot in view of the new ground(s) of rejection.

In the Remarks, Applicant argues:

a) Again, for example, there is no need to amend this recital, since the use of "said at least one of said programs" clearly has antecedent basis to "at least one of said programs".

...

Here, for example, there is no need to amend this recital, since the use of "said identifiers" clearly has antecedent basis to "storing ... identifiers".

...

Here, for example, there is no need to amend this recital, since the use of "said application programs" clearly has antecedent basis to "application programs" in the claim.

...

Here, for example, there is no need to amend these recitals, since the use of "said vendor identifiers" or "the vendor identifiers", clearly has antecedent basis to "vendor identifiers" in the claim.

Examiner's response:

a) Examiner disagrees. Although the various limitations of the claims have antecedent basis, Applicant is advised to change these limitations for the purpose of providing them with proper explicit antecedent basis. Such amendments to the claims would improve the clarity or precision of the claim language used or, at the very least, keep the claim language consistent throughout the claims.

In the Remarks, Applicant argues:

b) Based upon the present Amendment, it is believed that the provisional rejection is the only rejection remaining in this earlier filed of the two pending applications. Since the other later-filed application is rejectable on other grounds (*i.e.*, a response has not yet been filed as of the filing date of this Amendment), it is requested that the Examiner withdraw the provisional rejection from this Application and permit this earlier-filed application to issue as a patent without a terminal disclaimer.

Examiner's response:

b) Examiner disagrees. Since the provisional obviousness-type double patenting rejection is not the only rejection remaining in the earlier filed of the two pending applications (see § 103 rejection), the provisional obviousness-type double patenting rejection is maintained.

Furthermore, the MPEP clearly states that the provisional double patenting rejection should continue to be made by the Examiner in each application as long as there are conflicting claims in more than one application unless that provisional double patenting rejection is the only rejection remaining in at least one of the applications. See MPEP § 804, I.B.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Qing Chen whose telephone number is 571-270-1071. The Examiner can normally be reached on Monday through Thursday from 7:30 AM to 4:00 PM. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Wei Zhen, can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the TC 2100 Group receptionist whose telephone number is 571-272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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March 21, 2008
/Wei Zhen/

Supervisory Patent Examiner, Art Unit 2191